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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,533	11/24/2003	Richard M. Fitzpatrick	GDRMF01O	4395
33076	7590	12/09/2004	EXAMINER	
GEOFFREY E. DOBBIN, PATENT ATTORNEY 4278 SOUTH 6220 WEST WEST VALLEY CITY, UT 84128-6501			RICHARDSON, JOHN A	
		ART UNIT		PAPER NUMBER
		3641		

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/720,533	FITZPATRICK, RICHARD M.
	Examiner John Richardson	Art Unit 3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 September 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/24/2003</u> . | 6) <input type="checkbox"/> Other: _____.  |

**DETAILED ACTION**

***Non Final Rejection***

- 1). Applicant's election without traverse of species A and enclosing amended Drawings and Specification in response to Office action dated August 23 2004, in the reply filed on September 23 2004 is acknowledged.
- 2). The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 3). The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 4). The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5). The disclosure is objected to because of the following informalities:

- In the specification / drawings the mounting holes (items 34) referred to on page 6, line 10 of the specification, is not shown.
  - Stock-module (page 7, line 17, Item 12) is not shown on the drawings
- Appropriate correction is required.

6). Claims 1 to 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, i.e. failing to provide an enabling disclosure.

There is no adequate description nor enabling disclosure of how and in what manner the claimed '**latching mechanism**' is activated and put into operation. Specifically, the disclosure page 6, lines 7+, page 7, page 8, lines 1-14, merely provides a commentary of the said mechanism component parts identified in the Figures 1-12, without providing any information as to how a) the mechanism is activated, b) how the mechanism is de-activated, c) the role of the claimed '**actuator for the cam mechanism**', d) does the so-called actuation depend on an operator / user action of, for example, the latch body (item 22), to effect the claimed latching mechanism, and e) how and in what manner this actuator functions, and how this so-called '**actuator for the cam mechanism**' is proposed to operate in the activated and non-activated conditions.

In addition, there is no complete drawing of the device in Figures 1-2f to enable understanding as to the co-operation of parts. The function and operation of element item 24 is unclear. The purpose of the spring, item 25, is unclear. Note in Figures 2b, 2d, item 22 appears to indicate two separate parts. The pivot of the structure is also unknown.

Note that a disclosure in an application, to be complete, must contain such description and detail as to enable any person skilled in the art or science to which the invention pertains to make and use the invention as of its filing date, *In re Glass*, 181 USPQ 31.

7). Claims 6 to 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention, i.e. failing to provide an enabling disclosure.

There is no adequate description nor enabling disclosure of how and in what manner the claimed '**latching mechanism**' is activated and put into operation. Specifically, the disclosure page 6, lines 7+, page 7, page 8, lines 1-14, merely provides a commentary of the said mechanism component parts identified in the Figures 1-12, without providing any information as to how a) the mechanism is activated, b) how the mechanism is deactivated, c) the role of the claimed '**a cam mechanism actuator**', d) does the so-called actuation depend on an operator / user action of, for example, the latch body

(item 22), to effect the claimed latching mechanism, and e) how and in what manner this actuator functions, and how this so-called '**a cam mechanism actuator**' is proposed to operate in the activated and non-activated conditions.

In addition, there is no complete drawing of the device in Figures 1-2f to enable understanding as to the co-operation of parts. The function and operation of element item 24 is unclear. The purpose of the spring, item 25, is unclear. Note in Figures 2b, 2d, item 22 appears to indicate two separate parts. The pivot of the structure is also unknown.

Note that a disclosure in an application, to be complete, must contain such description and detail as to enable any person skilled in the art or science to which the invention pertains to make and use the invention as of its filing date, *In re Glass*, 181 USPQ 31.

8). Claims 1 to 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague, indefinite and incomplete, particularly as to what is the claimed '**actuator mechanism**', and how and in what manner does the '**actuator for the cam mechanism**' function and operate as stated in claim 1, sub-paragraph c.

As presently set forth, the metes and bounds of the claims are undefined.

9). Claims 6 to 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are vague, indefinite and incomplete, particularly as to what is the claimed '**a cam mechanism actuator**', and how and in what manner does the '**a cam mechanism actuator**' function and operate as stated in claim 6, sub-paragraph c, item ii.

As presently set forth, the metes and bounds of the claims are undefined.

10). Claims 4 to 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites the limitation "**the actuator**" in line 2. There is insufficient antecedent basis for this limitation in the claim.

11). Claims 13, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 recites the limitation "**the actuator**" in line

2, and claim 17, recites the limitation "**the actuator**" in line 2. There are insufficient antecedent basis for this limitation in theses claims.

12). Claims 6 to 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites the limitation "**the actuator**" in line 5, of sub-paragraph c, item iv.

There are insufficient antecedent basis for this limitation in these claims.

13). Claims 1, 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Hughes (U.S. 5,346,281).

The applicant's claims, as far as can be determined, is for an apparatus per se consisting of tooth cam, a cam mechanism with a cam anchor, all items arranged to form a latching mechanism.

The reference reads on the applicant's comprising a latching mechanism (item 28) with a pawl / cam component with an actuating cam surface (53), with a pivot / cam anchor (item 51), an interface with biscupid teeth (items 41, 42, 44, 54), and wherein an actuator (item 37) functions to bias the action of the said latching mechanism through

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the said teeth, relating to claim 2, the said biscupid teeth (items 44) interface in opposition to the said anchor / pivot (item 51).

It is noted that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from prior art apparatus" if the prior art teaches all the structural limitations of the claim. *In re Masham*, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device *is*, not what a device *does*. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP§ 2115, a recitation in a claim to the material or article worked upon, does not serve to limit an apparatus claim.

14). Claims 1, 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Beretta (U.S. 4,282,795).

The applicant's claims, as far as can be determined, is for an apparatus per se consisting of tooth cam, a cam mechanism with a cam anchor, all items arranged to form a latching mechanism.

The reference provides an apparatus that reads on the applicant's claims comprising a pistol mechanism in the form of a biscupid teeth (definition of 'biscupid' being taken as

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having or ending in two points) as shown in item 27, a cam surfaces (items 2, 22) located on an operating latch mechanism (items 3-4), a cam anchor and shaft (items 2, 12), and wherein the said latching mechanism biases the operation of the said pistol as shown in Figures 3, 8, Column 4, lines 1-37), and relating to claim 2, the reference discloses the pivot / anchor (item 2) laterally displaced from the said biscupid teeth (item 27) as shown in Figure 9.

15). Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Marquez (U.S. 5,997,053).

The applicant's claims, as far as can be determined, is for an apparatus per se consisting of tooth cam, a cam mechanism with a cam anchor, all items arranged to form a latching mechanism.

The reference discloses a latching mechanism (item 10) comprising a latch mechanism (items 14, 20) with a biscupid teeth interfaces (items 24, 56), cam surface in the said item 14 in the form of the elongated slot item 60, an anchor / pivot for the said cam surface (items 40, 41), and wherein the operation of the said latching mechanism biases the control of a variety of systems as stated in Column 5, lines 9-24).

16). Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Hutton et al (U.S. 3,949,507).

The applicant's claims, as far as can be determined, is for an apparatus per se consisting of tooth cam, a cam mechanism with a cam anchor, all items arranged to form a latching mechanism, and the mechanism located on a rail structure.

The reference discloses a structure that reads on the applicant's claims comprising a rail structure (item 20), a latching mechanism (item 42), an actuator / operating lever (item 18), a notch / cam surface (item 22), a bicuspid teeth details (definition of 'bicuspid' being taken as having or ending in two points) as shown in items 34 and acting on pockets 220 as shown in Figure 11, a notch / cam anchor means in the form of the recess in item 10 and the raised surface on the said item 18 actuator / operating lever as shown in Figure 12, and wherein the said actuator / operating lever positions the said notch / cam surface in a mounting module item 10 .

17). The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

18). Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Richardson whose telephone number is (703) 305

0764. The examiner can normally be reached on Monday to Thursday from 7.00 AM to 4.30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306 4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications can be obtained from either private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John Richardson, PE,

December 06 2004.

MICHAEL C. CARONE  
SUPERVISORY PATENT EXAMINER